

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

BD, a Minor, By and Through His Guardian)
Ad Litem, BRYAN MYERS,)
)
)
Plaintiffs,) CASE NO.: 2:22-cv-107
)
)
v.)
)
SAMSUNG SDI CO., LTD and HOHM)
TECH, INC.,)
)
Defendants.)

NOTICE OF REMOVAL

Defendant, Samsung SDI Co., LTD (“Samsung”), by counsel, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby files this *Notice of Removal* to remove the above-captioned lawsuit to this Court. Samsung, appearing only to effect removal, and preserving all available defenses, states:

VENUE

1. On August 24, 2021, Plaintiffs filed their Complaint for Damages (“Complaint”) against Defendant in the Superior Court of Knox County, Indiana, under cause number 42C01-2108-CT-000021 (the “State Court Action”). The Complaint is attached as **Exhibit A**.

2. Removal of the State Court Action to the Southern District of Indiana, Terre Haute Division, is proper under 28 U.S.C. § 1441(a), because the Southern District of Indiana, Terre Haute Division, embraces Knox County, where the State Court Action is pending.

REMOVAL IS TIMELY AND PROPER

1. On July 30, 2021, Defendant Hohm Tech, Inc. (“Home Tech”) filed bankruptcy in the Central District of California (the “Bankruptcy Court”). *See Exhibit B.*

2. Hohm Tech is under the protection of the Bankruptcy Court's automatic stay and is not amenable to service. *See Brown v. Jevic*, 575 F.3d 322, 327 (3d Cir. 2009) ("Non-debtor defendant in multi-defendant action may remove cause of action to federal court when debtor defendant is not amenable to service of legal process."); *See also Chilton Private Bank v. Norsec-Cook, Inc.*, 99 B.R. 402, 403 (N.D. Ill. 1989) ("Joinder of nondiverse bankrupt defendant, in violation of automatic stay, was improvident and could not be used to defeat other defendants' right of removal, even if removal notice was not timely filed.").

3. Even if Hohm Tech was amenable to service, a reverse lookup of the tracking number associated with Plaintiff's purported service to Hohm Tech reveals that they were never actually served. *See Certificate Of Issuance Of Summons* and United States Postal Service tracking information attached hereto as **Exhibit C**.

4. Accordingly, Samsung is not required to seek Home Tech's consent to removal.

5. On August 30, 2021, Defendant Aspire Vape Co d/b/a Affordable Vapor was served via certified mail.

6. On December 23, 2021, Plaintiffs filed a Voluntary Dismissal of Defendant Apsire Vape d/b/a Affordable Vapor.

7. On December 28, 2021, the Court granted Plaintiffs' dismissal of Apsire Vape d/b/a Affordable Vapor.

8. On or around February 22, 2022, Samsung was served with a Summons and Plaintiffs' Complaint for Damages.

9. On March 8, 2022, the undersigned counsel entered their appearances for Samsung in the State Court Action and moved for an extension of time to respond to Plaintiffs' Complaint up to and including April 18, 2022.

10. There have been no other proceedings in the State Court Action.

11. Thus, Defendant's Notice of Removal is timely under 28 U.S.C. § 1446(b).

DIVERSITY JURISDICTION EXISTS

1. Under 28 U.S.C. § 1332(a), this Court has original jurisdiction over the State Court Action because Plaintiffs and Defendant are citizens of different states and the amount in controversy is over \$75,000, exclusive of interest and costs.

2. Plaintiffs, BD and Bryan Myers, are natural persons and citizens of Indiana.

3. Samsung is a citizen of South Korea.

4. Hohm Tech, Inc. is a citizen of California.

5. The State Court Action arises out of alleged damages related to a battery explosion. Upon information and belief, Plaintiff's claimed damages are greater than \$75,000 exclusive of interests and costs.

6. The State Court Action does not fall within any class of actions under which applicable rules, laws, or statutes limit or prohibit removal to this Court.

7. For these reasons, the State Court Action is properly removed to this Court under 28 U.S.C. §§ 1367, 1441, and 1446.

STATUTORY REQUIREMENTS

8. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81-2, a copy of the entire state court file is attached as **Exhibit D** and includes the State Court Record as of the date of this Notice of Removal, including the following: Complaint, Appearance, Summons, Certificate of Service, Verified Petition for Temporary Admission, Order Granting Temporary Admission, Motion for Voluntary Dismissal, Order Grant Voluntary Dismissal, Appearance, Motion for Enlargement of Time.

9. Pursuant to 28 U.S.C. § 1446(d), Defendants will file a copy of this Notice of Removal with the Superior Court of Knox County, Indiana, and Defendant Samsung will serve Plaintiffs with both this Notice of Removal and the Notice of Filing Notice of Removal.

WHEREFORE, Defendant, Samsung SDI Co., LTD, gives notice of the removal of the State Action to this Court.

Respectfully,

s/ Ronald Gilbert, III

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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2022, a copy of the foregoing was served on the following parties electronically by using the Court's IEFS System and U.S. Postal Service, pre-paid delivery for those parties not yet registered:

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